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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 107

In The Matter Of

WALTHAM WATCH COMPANY, a corporation and HARRY ARONSON, BEN COLE and MORRIS DRAFT, individually and as officers of said corporation, *Petitoners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

PETITION FOR RE-HEARING

BEN PAUL NOBLE,
Attorney for Petitioners
2022 R St., N.W.
Washington, D. C.
Dupont 7-3292

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR RE-HEARING

Come now the petitioners, Waltham Watch Company, a corporation, Harry Aronson, Ben Cole and Morris Draft, individually and as officers of said corporation, by and through their attorney, B. Paul Noble, and pursuant to Rule 58 of the Rules of this

Court, petition for a re-hearing of the Order of this Court entered on October 11, 1965 denying their petition for a writ of certiorari herein, and as reasons therefor submit the following.

Grounds

Intervening since the filing of the Petition for Writ of Certiorari herein and the date of the entry of the Order denying said petition, the Federal Trade Commission has found that the petitioners are not in compliance with Final Orders entered in two other separate and distinct Commission proceedings. (See Appendix A, letter dated October 8, 1965.)

The orders in those cases (dockets: F.T.C. 6914 and 7997 are similar to those entered herein by the Commission below. (docket: F.T.C. 8396.) The petitioners had undertaken compliance with those orders and filed reports of compliance accordingly. It is now impossible for petitioners to determine what the agency respondent would require it to do in order to comply with orders relating to marking of country of origin and qualification of the use of its trade name. It is clear that the Commission would require petitioners to mark and qualify in such manners as to make it non competitive in the industry and the effect of the agency enforcement of those orders and of that entered below in these proceedings will tend to make it impossible for petitioners to survive economically in a highly competitive industry in which sales are in such large measure determined by the advertising of the manufacturers.

It is clear that the Commission is considering each of the three cases involving the Waltham Watch Com-

pany as one for compliance purposes and this is contrary to arguments heretofore made by the agency countering petitioners' argument throughout all of the proceedings that the entry of three orders going to the same substance constitutes administrative harassment and is a denial of due process of law.

The instant case involves alleged fictitious pricing, which was not involved in the other two cases instituted by the Commission against the corporate petitioner (the orders in which become confusingly impossible to construe when, as here they are construed as one). Intervening, and possibly controlling of this Court's decision to deny the petition for a writ of certiorari here, and since filing of this petition for writ of certiorari, is the argument on March 11, 1965 of an appeal of an order of the Commission similar in all respects to the order here insofar as it relates to fictitious pricing. The 8th Circuit Court of Appeals has not as yet entered its decision in that companion case and should it be in any respect different than the order of the Court of Appeals below, then these petitioners will be even more adversely affected competitively. Certainly, if the Court of Appeals in that Case should reverse or modify the order of the Commission with reference to fictitious pricing, these petitioners should be accorded that same relief which is only available in this Court.

On the other hand, this Court may grant any future petitions for certiorari filed in behalf of petitioners that may be subject to the same order as to prices as are these petitioners, *if* the 8th Circuit Court of Appeals should reverse or modify the Commission's order in the Benrus case. (In the matter of: *Benrus Watch*

Co., et al. v. *Federal Trade Commission,* Case No. 17,692, and 17,821 October Term 1965, USCA 8th.)

WHEREFORE, the premises considered, petitioners pray that this petition for rehearing be granted.

Respectfully submitted,

B. Paul Noble

BEN PAUL NOBLE,
Attorney for Petitioners
2022 R St., N.W.
Washington, D. C.
Dupont 7-3292

CERTIFICATE OF COUNSEL

I certify that the foregoing Petition For Re-Hearing is presented in good faith, and not for any purpose of delay. and this petition is restricted to the grounds provided in Rule 58(2), this Court's rules.

B. Paul Noble

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Petition For Re-Hearing were mailed, 1st class postage prepaid to the Hon. Thurgood Marshall, Solicitor General of the United States and to James McI. Henderson, General Counsel, Federal Trade Commission on this 26th day of October, 1965.

B. Paul Noble

BEN PAUL NOBLE

APPENDIX "A"

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

Oct. 8, 1965

Waltham Watch Company,
231 South Jefferson Street,
Chicago 6, Illinois.

Attention: Mr. Harry Aronson,
Mr. Lawrence Aronson.

Re: Waltham Watch Company, et al.,
Docket No. 7997.

Waltham Precision Instrument
Company, Inc.,
(Now, Newal, Inc.), et al.,
Docket No. 6914.

Gentlemen:

The Commission is in receipt of your communications dated April 9, 1964, June 18, 1964, January 26, 1965 and July 6, 1965, with attached exhibits, which you have filed as your report demonstrating the manner and form of your compliance with the orders to cease and desist issued on June 15, 1962 and July 20, 1962, in the above cases.

The Commission, as requested, consolidated the reports for determination of compliance with the orders in both cases, and rejected the consolidated report for the following reasons:

1. The report reflects nonconformity with the requirements of paragraphs I(1) and II(Part 2) of the order in Docket 7997 in that the public is not being clearly warned by a statement immediately in connection with the association of "Waltham" with a particular product, that the product is not manufactured by the Waltham Watch Company of Waltham, Massachusetts.

2. The report discloses nonconformity with Paragraphs I(2) and II(Part 2) of the order in Docket 7997 and Paragraphs 2 and 4 of the order in Docket 6914 in that the foreign origin of products referenced as "Waltham" is inadequately disclosed on the products and is not disclosed in advertising, labeling and packaging.

3. The report discloses nonconformity with Paragraphs I and II(Part 2) of the order in Docket 7997, in that licensees are authorized and required to reference the name "Waltham" but are not required to make the disclosures specified by the order.

4. The report does not satisfactorily demonstrate conformity with the requirements of Paragraphs 1 and 4 of the order in Docket 6914 in that no evidence has been submitted that the 41, 53, 65 and 100 jewel representations in *Exhibits* C-1-1 (6914), C-1-2 (6914), C-1-3 (6914), C-1-4 (6914), C-1-5 (6914), C-1-6 (6914) meet the test prescribed by Paragraph 1 of the order.

By direction of the Commission.

JOSEPH W. SHEA
Joseph W. Shea,
Secretary.

CC: Ben P. Noble, Esquire,
Noble & Duff,
Attorneys at Law,
2022 R Street, N. W.,
Washington, D. C. 20009